IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.3188 OF 2003

M/s Mirachem Industries .. Plaintiff

versus

M/s Mastro Dyes & Chemicals .. Defendant

...

Mr. Ramesh Dhanuka i/b Ms A.R.Dhanuka for Plaintiff.

Mr. E.Anandan for Defendant.

CORAM : D.G. KARNIK, J

DATED : 21st March 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None for the defendant when called. Despite service of the Summons for Judgment the defendant has not filed an application for leave to defend nor filed any affidavit in reply in this Court,. Learned counsel for the plaintiff however states that copy of the interim reply dated 14th February, 2005 was served on him. Learned counsel for the plaintiff tenders the original documents. The documents are taken on record and collectively marked Exhibit A. Though the

original of that interim reply was never filed in this Court I would consider the defences raised in the interim reply from the copy which was handed over to me by learned counsel for the plaintiff. The copy is returned after its perusal.

2. I have perused the plaint and the affidavit in support of the Summons for Judgment. The plaintiff sold, supplied and delivered to the defendant goods and sent invoices. The defendant received the goods and issued 'C' forms. On the reverse of the'C' forms the defendant has put its signature with a rubber stamp giving the details of the invoices/bills. No dispute regarding receipt of the goods and invoices is raised in the interim reply. Only two defences are raised in the reply. Firstly, it is stated that there was no agreement to pay interest and secondly that the goods were of inferior quality and many of the defendant's customers have raised debit notes. As regards the inferior quality of the goods, no evidence has been produced regarding the alleged inferior quality. Copies of the alleged debit notes raised by the defendant's customers have also not been filed on record. It is worthwhile to note that goods were supplied between December, 2000 and November, 2001.

No dispute was raised by the defendant about the quality of the goods at any time and defence about the inferior quality of the goods is raised for the first time in the affidavit in reply. No details of what was the defect in the quality of the goods are given in the reply. Only a bald statement is made that the goods were of inferior quality and hence the defence about the quality of the goods is nothing but an afterthought.

3. As regards the interest, invoices contain a clause regarding charging of interest. Receipt of the invoices is not denied. In fact, receipt of the invoice is admitted by signing on the reverse of the'C' form. In the circumstances, the defence that there was no agreement to pay interest has no substance. In the circumstances, there is no defence of any substance available to the defendant. Hence, I pass the following order :

> " Summons for Judgment is made absolute and suit of the plaintiff is decreed as follows:
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> " The defendant shall pay to the plaintiff a sum of Rs.5,53,846.40 together with interest

on the principal sum of Rs.3,54,079.40 at 6 % p.a. from the date of the suit till payment and all costs of the suit. "

. After this order was pronounced, Mr. Anandan appears for the defendant and reiterates only the defences raised in the affidavit in reply which have been considered above. No other point is urged. In the circumstances, there is no reason to modify the order which is just now pronounced in the open court. The order is hereby confirmed.

D.G.KARNIK, J